

## APPEAL NO. 010523

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 22, 2001. The hearing officer determined that: (1) the decedent did not sustain a compensable injury, including a compensable multisystem heat-related injury, resulting in the decedent's death on \_\_\_\_\_; (2) the respondent's (carrier) Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21) filed on August 23 and 24, 1999, sufficiently disputed compensability of the decedent's death; and (3) the carrier was allowed to reopen the issue of compensability and file a TWCC-21 on February 23, 2000, because it was based on newly discovered evidence that could not reasonably have been discovered earlier. The appellant (claimant) appeals the hearing officer's decision. The carrier responds.

### DECISION

Affirmed.

#### **Compensable Injury**

The hearing officer did not err in determining that the decedent did not sustain a compensable injury, including a multisystem heat-related injury, resulting in decedent's death on \_\_\_\_\_. The claimant had the burden of proving that the decedent's injury arose out of and in the course and scope of his employment. There was conflicting evidence presented with regard to this issue. The hearing officer could infer from the evidence, as he did, that the decedent's injury and subsequent death was not work-related. We will not reverse the hearing officer's determination unless it is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust, and we do not find it so in this case. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

#### **Payment of Compensation or Notice of Refused/Disputed Claim (TWCC-21)**

The hearing officer did not err in determining that the carrier's TWCC-21 filed on August 23 and 24, 1999, sufficiently disputed compensability of the decedent's death. The carrier's notice of refused/disputed claim must specify the grounds for the refusal and contain sufficient claim-specific substantive information to enable the employee/legal beneficiary to understand the carrier's position or action taken on the claim. See Section 409.022 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 124.2(f) Rule 124.2(f). The carrier's TWCC-21 stated, "the carrier disputes fatality occurred in course and scope of employment pending final autopsy results to determine cause of death." In Texas Workers' Compensation Commission Appeal No. 93302, decided June 2, 1993, we held that the phrase "is not work related" was sufficient to dispute the basic issue that an injury was suffered within the course and scope of employment. The hearing officer's determination, in this case, is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

### **Newly Discovered Evidence**

The hearing officer did not err in determining that the carrier may reopen the issue of compensability and file a TWCC-21 based on newly discovered evidence. Section 409.021(d) provides that a carrier may reopen the issue of the compensability of an injury if it learns of evidence that could not reasonably have been discovered earlier. Whether evidence could have been reasonably discovered earlier was a matter within the sound discretion of the hearing officer. See Texas Workers' Compensation Commission Appeal No. 92038, decided April 16, 1992. In view of the evidence presented, we cannot conclude that the hearing officer's determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain.

The decision and order of the hearing officer are affirmed.

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Susan M. Kelley  
Appeals Judge

CONCUR:

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Thomas A. Knapp  
Appeals Judge

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Philip F. O'Neill  
Appeals Judge